

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 436 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHESH RATILAL CHOKSHI

Versus

KANTILAL PREMJI PATODIYA

Appearance:

MR PM THAKKAR for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/12/2000

ORAL JUDGEMENT

#. The petitioner is the original defendant against whom the respondent - plaintiff has filed the civil suit being Regular Civil Suit No.38/93 in the court of Judge, Small Causes Court, Rajkot. The said suit has been filed for

declaration and injunction. It is the case of the plaintiff that, he is occupying the suit shop No.207 situated in Giriraj Chamber at Rajkot and that he is the tenant of the defendant paying monthly rent of Rs.1000/p.m. According to the plaintiff, the defendant is trying to dispossess him from the rented shop without following due procedure of law, therefore, the aforesaid suit for declaration and injunction has been filed. The present petitioner who is the defendant in the said suit, by filing written statement as well as reply to the injunction by way of Exh.13 and 16 has denied the allegations of the plaintiff in the plaint. It is the case of the defendant that there was no relationship of the landlord and the tenant between the parties and the Small Causes Court has no jurisdiction to decide the suit. The defendant has also stated that, he is doing the business of selling golden and silver ornaments and the plaintiff's nephew one Naginbhai Haribhai was doing work of making silver and golden ornaments and that before 1 and 1/2 years he had given gold to Naginbhai for making ornaments but the said Naginbhai did not deliver the ornaments back to the defendant and instead of giving back the said ornaments or gold, the said Naginbhai had given his two shops No.207 and 308 which are situated in Giriraj Chambers to the defendant against the price of the gold. The said Naginbhai has also executed the sale deed on 21.1.1992 in favour of the defendant. Naginbhai had also given oral assurance to hand over peaceful possession to the defendant, but subsequently he committed the breach of the trust and in order to harass the defendant, the plaintiff has filed the aforesaid false suit. According to the defendant, the plaintiff is not in possession of the said shops, but Naginbhai is doing the business in the same. On these and such other grounds, the suit was denied and it was prayed that the application for interim injunction be dismissed.

#. After hearing both the sides, learned trial court granted the application for interim injunction.

#. The aforesaid order was challenged in appeal by the present petitioner being Civil Misc.Appeal No.105/93. The said appeal was dismissed by the Assistant Judge, Rajkot on 8.2.1994. The aforesaid order is challenged in the present petition by the original defendant.

#. I have heard the learned advocate Mr.Pahwa for the petitioner and Mr.Y.S.Lakhani, learned advocate for the respondent.

#. Both the courts below have found that there is prima

facie case in favour of the plaintiff and that the balance of convenience is also in favour of the plaintiff. It has been found that the plaintiff cannot be evicted without following due procedure of law and considering the facts and circumstances of the case, the order of injunction which was granted by the trial court was confirmed by the appellate court while deciding the appeal under Order 43 of C.P.C. In view of the judgment of the Honourable Supreme Court reported in AIR 1973 SC, 76 it cannot be said that the courts below have committed any error of jurisdiction while deciding the interim application Exh.5. This court is not sitting in appeal while exercising the powers under section 115 of C.P.C. Even otherwise, there is no infirmity in the orders passed by the courts below. I do not find any substance in this revision application, hence, the same is dismissed. Rule is discharged with no order as to costs.

#. However, hearing of the suit being Regular Civil Suit No.38/93 is expedited and the same may be disposed of as early as possible preferably by 31.10.2001.

(P.B.Majmudar,J)
(pathan)